Public Health Appeal Board

2014 Annual Report

Prepared for the Minister of Health

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PHAB
Public Health Appeal Board

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Role of the Public Health Appeal Board

The Board was established under section 3 of the *Public Health Act*. Its mandate, role and responsibilities are also set out in the *Alberta Public Agencies Government Act, Public Health Act Waiver Regulation, Public Inquiries Act* and the *Order in Council* appointing the Board members.

The Board consists of 5 members and 3 members constitute a quorum at a meeting or hearing of the Board.

The duties of the Board include hearing appeals from individuals who have been directly affected by an order issued under section 62 of the *Public Health Act* or a decision to issue, cancel, suspend or refuse to issue a licence, permit or other approval provided for in the regulations and any other decision in respect of which an appeal is permitted under the regulations.

The Appellant must be directly affected by an order or a decision and feel aggrieved by that order or decision.

Most appeals submitted to the Board relate to orders issued under section 62 of the *Public Health Act*. The orders are issued after an Executive Officer has inspected a private or public place and has probable grounds to believe that a nuisance exists or that there has been a contravention of the Act or its regulations.

An order may include the following:

- Requiring the vacating of the place;
- Declaring the place or any part of it to be unfit for human habitation;

- Requiring the closure of the place;
- Requiring the doing of work specified in the order;
- Requiring the removal from the place anything that the order states causes a nuisance;
- Requiring the destruction of anything specified in the order;
- Prohibiting or regulating the selling, offering for sale, supplying, distributing, displaying, manufacturing, preparing, preserving, processing, packaging, serving, storing, transporting or handling of any food or thing in, on, to or from the place.

The Board may confirm, reverse or vary the order or decision or may refer the matter to Alberta Health Services for further consideration and redetermination. The Board provides written decisions to Alberta Health Services and the Appellant.

The Board is guided by the principals of administrative law and natural justice as they apply to quasi-judicial tribunals.

The Board is required to make a report each year to the Minister summarizing generally its activities and affairs in the preceding year. This report covers the activities and affairs of the Board from January 1, 2014 to December 31, 2014.

Board Members for 2014

Kenneth Hodgins – Chair

Mr. Hodgin's background is in the men's wear retail business for 35 years; 27 years as owner/operator. He has been active in many community organizations. He served 18 years on municipal council; 9 years as alderman and 9 years as mayor of Fort Saskatchewan. He retired as executive director of the Fort Saskatchewan Chamber of Commerce. Mr. Hodgins was a Board member from February 2012 to April 2014.

Julia Jones – Chair

Julia Jones has a Social Work Degree and a Law Degree from the University of Calgary. She practices law in Calgary and was the assistant vice president for First Canadian Title Company for several years. She has also worked as a social worker and a child welfare worker for the Government of Alberta. She served as a member of the Legal Aid Review Committee for 10 years. She was appointed to the Calgary and South Mental Health Review Panel in 2014 and as Chair of the Public Health Appeal Board in April 2014.

Ron Everard, Q.C. – Vice Chair

Ron Everard, now an inactive member of the Law Society of Alberta, has more than 30 years of legal experience. Ron has acted as an advocate, mediator and arbitrator in a variety of cases. He appeared as counsel at all levels of the Alberta courts and conducted numerous trials and appeals. Ron was appointed a Queen's Counsel in 2004. Throughout his legal career Ron lectured and instructed at seminars and conferences in the areas of Injury Law, Insurance, Alternate Dispute Resolution and Advocacy, for various legal and professional organizations.

Ron served as a Bencher of the Law Society of Alberta from 2004 to 2012, as a Trustee for the Calgary District Hospital Group, as a Member of the Development Appeal Board for the City of Calgary and as a Member of the Law Enforcement Review Board. In 2009, Ron was appointed a Commissioner of the Appeals Commission of the Workers' Compensation Board and as Vice-Chair of the Public Health Appeal Board in April 2014.

Terry Bunce

Terry Bunce has been active with a variety of theatre, dance, and community service organizations for several decades. His work on quasi-judicial panels is a logical extension of his community activism and social conscience. He has served in adjudicative positions for the past 14 years including the Appeals Commission for Workers' Compensation, Persons with Developmental Disabilities Appeal Secretariat, and as a Hearing Adjudicator for inmate disciplinary matters in Alberta correctional facilities. Mr. Bunce was appointed as a Board member in February 2012.

David Thomas

David Thomas is a lawyer who practised law in Edmonton and Drayton Valley for 24 years. During this time he served 8 years on Drayton Town Council. After retiring in 1995, he began raising cattle and working part time for various municipal and government boards, including the Municipal Government Board for 12 years and currently for the Surface Rights and Land Compensation Board. David is also a director for the Battle River Rural Electrification Association and the Lamont County Development Appeal Board. He and his wife, Jane Hurl, continue to raise a small number of cattle on their farm. He was appointed to the Public Health Appeal Board in April 2014.

Linda Cloutier

Linda Cloutier has actively advocated for individuals through her extensive community volunteerism in addition to the many years she served the public in educational and private sectors in administrative and financial positions. Linda also served her community as a Justice of the Peace for the Criminal Courts and as a Town Councillor. She was appointed to the Persons with Developmental Disabilities Appeal Panel in 2006 and since 2010 has served as the Chair. In March 2014, Mrs. Cloutier was appointed to the Calgary and South Mental Health Review Panel and in April 2014 to the Public Health Appeal Board.

Diana Demeules

Ms. Demeules is a former Military Police member who served twenty years with the Canadian Forces. Diana has also served on numerous boards pertaining to Victim Rights and spent two years as the investigative specialist for the Canadian Food Inspection Agency. She then transferred to Transport Canada where she is an Aviation Security Inspector. Ms. Demeules was a Board member from April 2011 to April 2014.

Phyllis Kobasiuk

Ms. Kobasiuk has served municipal and provincial government for over forty years in various governance roles. First elected to the County of Parkland in 1989, Phyllis has been Councillor; Reeve; and, Board of Education Trustee and Chair. In 2004 she became the first publicly elected Mayor of Parkland County. For ten years Phyllis served as the Pembina Director on the Executive of the Alberta Association of Municipal Districts and Counties. She has been awarded the Parkland County Community Service Award of Excellence, Premier's Award of Municipal Excellence, the Alberta Centennial Medal, and the Queen's Diamond Jubilee Award. Ms. Kobasiuk was a Board member from August 2011 to April 2014.

Summary of Board Activities 2014

Appeals received in 2014

Number of Appeals received, carried forward from previous years and to the next year	
Number of Notices of Appeal received by the Board in 2014	15
Number of Appeals carried over from previous years	5*
Number of Appeals carried over to 2015	0
Total number of Appeals completed in 2014	20

** 3 appeals that were carried forward from previous years were consolidated into one appeal. If those appeals were counted individually, there would have been 7 carried forward from previous years.*

Compared to 2011, 2012 and 2013

Number of Appeals received, carried forward from previous years and to the next year	2011	2012	2013	2014
Notice of Appeals received	35	27	29	15
Carried over from previous years	10	10	3	5
Carried over to the next year	10	3	5	0
Appeals completed	35	34	27	20

The total number of appeals completed in 2014 was 20 which was a 26% decrease from the total number of appeals completed in 2013. It was a 42% decrease from the total number of appeals completed in 2012 and 2011.

There was a significant decrease in the number of notice of appeals received by the Board in 2014 from previous years. This decrease was 48% from 2013, 44% from 2012 and 57% from 2011. This was on average, a 50% decrease in the number of appeals received in 2014 from the previous 3 years.

Stay Hearings

The *Public Health Act* allows Appellants to apply for a stay of the order or decision prior to the appeal hearing. Of the 20 appeals that were completed in 2014, 7 Appellants requested a stay hearing when they served their Notice of Appeal on the Board. Only 4 of the stay applications proceeded to a stay hearing, the other 3 were withdrawn prior to a stay hearing being completed. The Board granted 3 stay orders in the 4 stay applications that proceeded to a stay hearing.

Legal Representation for Appellants and Respondent

Legal counsel represented Appellants in 5 of the 20 appeals completed in 2014 and legal counsel (in-house or retained) represented the Respondent, Alberta Health Services, in 20 appeals in 2014.

Appeals Resulting in a Hearing

After an appeal is submitted by the Appellant, the Board sets a hearing date to hear the submissions of the Appellant, Alberta Health Services and any Intervenors. The appeals submitted by the Appellants frequently do not proceed to a hearing. In 2014, 40% of the completed appeals resulted in a hearing and 60% did not proceed to a hearing.

Appeals Resulting in a Hearing vs no Hearing	2014
Hearings completed by the Board	8*
Appeal did not progress to a hearing	12
Appeals completed in 2014	20

**2 appeal hearings were heard twice due to a change in some Board members prior to the decisions being finalized. This resulted in the Board completing 10 hearings for 8 appeals in 2014. The additional hearings are not included in these statistics.*

Compared to 2011, 2012 and 2013

Appeals Resulting in a Hearing vs no Hearing	2011	2012	2013	2014
Hearings completed by the Board	10	8	13	8
Appeal did not progress to a hearing	25	26	14	12
Total Appeals completed	35	34	27	20

The total number of appeals that proceeded to a hearing by the Board in 2014 was 38% less than in 2013 but was the same as 2012 and slightly less than in 2011. The most significant trend appears to be the number of appeals received by the Board that do not progress to a hearing. The number of appeals that did not progress to a hearing in 2014 and 2013 are similar but significantly less, 49% less, than in 2012 and 2011.

Number of Days from Notice of Appeal Received and Hearing

The *Public Health Act* requires the Board to hear the appeal within 30 days after receiving the notice of appeal.

Number of Days from Notice of Appeal received and Hearing	2014
Average	65*
Median	34

**The appeal that consolidated 3 appeals into one and was carried forward from previous years skewed the average number because that hearing was 294 days after the notice of appeals were received.*

** Only the first hearing date was used to calculate the average and median shown above for the 2 appeals that required a second hearing because some of the Board members changed prior to the decisions being finalized. Those 2 appeals were re-heard 64 and 76 days after the first hearing.*

Hearing Results in 2014

The Board may confirm, reverse or vary the order or decision being appealed or may refer the matter to Alberta Health Services for further consideration and redetermination.

Hearing Results in 2014	
Board confirmed order	4
Board varied order	1
Board reversed order	3
Board referred matter back to AHS	0
Total Hearings completed in 2014	8

Compared to 2011, 2012 and 2013

Hearing Results	2011	2012	2013	2014
Board confirmed order	7	8	8	4
Board varied order	3		3	1
Board reversed order			1	3
Board referred matter back to AHS			1	0
Total number of hearings completed	10	8	13	8

In 2014 50% of the hearings resulted in the Board confirming the order compared to 62% in 2013, 100% in 2012 and 70% in 2011.

Number of Days from Hearing until Decision Issued by Board

Number of Days from Hearing until Decision Issued by Board	2014
Average	37
Median	31

Appeals Resulting in No Hearing

When an appeal does not progress to a hearing, the primary reason is that an Appellant withdraws the appeal prior to the hearing date being set or the hearing commencing.

Appeals that did not proceed to a Hearing	2014
Appellant withdrew or abandoned the appeal	11
Appeal period expired and was not extended by the Board	1
Board found there was no order issued to appeal	0
Appeals that did not progress to a hearing in 2014	12

Compared to 2011, 2012 and 2013

Appeals that did not proceed to a Hearing	2011	2012	2013	2014
Appellant withdrew or abandoned the appeal	19	23	13	11
Appeal period expired and was not extended by Board	5	2	0	1
Board found there was no order issued to appeal	1	1	1	0
Total Appeals that did not progress to a Hearing	25	26	14	12

Subject Matter of Appeals

The majority of appeals completed by the Board in 2014 related to rental accommodation/ housing: 85%. Of the 17 appeals that related to rental accommodation/housing, 4 involved marijuana grow operations or illegal drug manufacturing: 24%.

Subject Matter of 2014 Appeals	2014	%
Rental accommodation/housing	17	85
Pools/Leisure facilities	0	0
Food Establishments	2	10
Water/wells	1	5
No order to Appeal	0	0
Total	20	100

Compared to 2013

Subject Matter of Appeals	2013 %	2014 %
Rental accommodation/housing	89	85
Pools/Leisure facilities	7	0
Food Establishments	4	10
Water/wells	0	5
No order to Appeal	0	0
Total	100	100

Appeals by Zone

Appeals submitted to the Board from the 5 Alberta Health Services' Districts are set out below. The appeals submitted from the Edmonton zone were 35% while the percentage from the Calgary zone was 40%.

Appeals by Zone	2011	2012	2013	2014
Zone 1 South	1	0	2	0
Zone 2 Calgary	8	14	11	8
Zone 3 Central	4	4	6	2
Zone 4 Edmonton	17	11	5	7
Zone 5 North	5	5	3	3
Totals	35	34	27	20

Percentage of Appeals by Zone

Appeals by Zone - %	2011	2012	2013	2014
Zone 1 South	3	0	7	0
Zone 2 Calgary	23	41	41	40
Zone 3 Central	11	12	22	10
Zone 4 Edmonton	49	32	19	35
Zone 5 North	14	15	11	15
Totals	100%	100%	100%	100%

Other Board Activities

- The Board prepared and adopted a Code of Conduct.
- The Board updated the format and information included in its Annual Reports.
- The Board completed training of 4 new board members.

Board Goals for 2015

The Board plans to implement performance assessments of individual Board Members and the Board as required by the *Alberta Public Agencies Governance Act*.

The Board plans to create a website for the public and potential Appellants that will include information about the Public Health Appeal Board, related legislation and case law, the Board's appeal process and Board Decisions.